

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INSTITUTE FOR DISABILITIES
RESEARCH AND TRAINING, INC.

Plaintiff,

v.

WAL-MART STORES, INC.

Defendant.

Case No. 05-176-GMS

* * * * *

**PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO AMEND OR ALTER JUDGMENT OR
RELIEF OF JUDGMENT; AND MOTION FOR ENLARGEMENT OF TIME**

1. On October 25, 2007, the Plaintiff, IDRT, filed a pleading entitled "Motion to Amend or Alter Judgment or, Alternatively, Motion for Relief of Judgment" (hereinafter "Motion"); and a Motion to Enlarge Time for filing the foresaid motion under Federal Rule of Civil Procedure 6(b)(2).

2. The aforesaid Motion addresses the Court's Judgment of September 25, 2007 and requests the Court to quantify the amount of the judgment, consistent with the Court's Memorandum, page 19, that concluded as follows:

IDRT is entitled to recover additional compensation for Phase II based on the "Phase Contract Price," reduced by the \$28,292.01 credit owed by IDRT to Wal-Mart.

3. The aforesaid Motion requested relief, alternatively, pursuant to Federal Rule of Civil Procedure 59(e) or Federal Rule of Civil Procedure 60(b).

4. Also, on October 25, 2007, the Defendant, Wal-Mart, filed a Notice of Appeal of the Court's Judgment of September 25, 2007 and that appeal has been docketed in the United States Circuit Court of Appeals for the Third Circuit, Case No. 07-4160 (CMH).

5. On October 29, 2007, the U.S. Court of Appeals for the Third Circuit issued a letter directive requiring the parties to respond by November 8, 2007 to the issue of whether the appeal is premature because it was taken from an order (i.e. September 25, 2007 Judgment) which is not final within the meaning of 28 U.S.C. §1291 and which is not otherwise appealable at this time because the "amount of damages have not been quantified." (Copy of letter directive attached as Exhibit 1.)

6. The Appellee (IDRT) responded to the Third Circuit's letter directive on November 8, 2007, asserting the Judgment was incomplete, the appeal was premature, and the case should be remanded to the United States District Court for amendment or supplementation. (Copy of IDRT's submission, attached as Exhibit 2.)

7. By letter dated November 7, 2007 (received by IDRT's counsel 11/13/07), Wal-Mart responded to the Third Circuit's directive and asserted it was not opposed to a dismissal of the appeal on the grounds stated in the Third Circuit's letter directive of October 29, 2007. (Copy of Wal-Mart's submission attached as Exhibit 3.)

8. In the meantime, on November 8, 2007, Wal-Mart filed a response to Plaintiff's post-trial motions in this Court, asserting therein this Court does not have jurisdiction to entertain the aforesaid Plaintiff's Post-Trial Motion in light of Wal-Mart's Notice of Appeal.

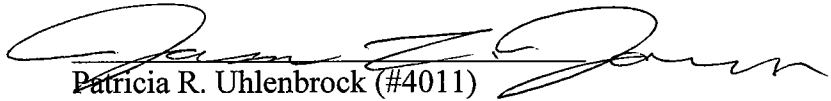
9. This Court has yet to Rule on IDRT's post-trial motions, including the Rule 6(b)(2) Motion for Enlargement of Time to File the Rule 59(e) Motion.

10. As a practical matter, IDRT submits that resolution of this Court's consideration of IDRT's post-trial motions be suspended while the Third Circuit decides whether it will dismiss the appeal as premature.

11. In the event Wal-Mart's appeal is dismissed, IDRT will so advise the Court and request this Court to consider and rule on its post-trial motions.

12. In the event the Third Circuit does not dismiss the appeal at the present time, IDRT will so advise the Court and request this Court to consider and rule on its Rule 60(b) motion.

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